

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND, PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST;
TEAMSTERS HEALTH & WELFARE FUND
OF PHILADELPHIA AND VICINITY;
PHILADELPHIA FEDERATION OF
TEACHERS HEALTH AND WELFARE
FUND; DISTRICT COUNCIL 37, AFSCME -
HEALTH & SECURITY PLAN; JUNE
SWAN; BERNARD GORTER, SHELLY
CAMPBELL and CONSTANCE JORDAN

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri
corporation; and McKESSON
CORPORATION, a Delaware corporation,

Defendants.

C.A. No. 1:05-CV-11148-PBS

**DECLARATION OF DONALD C. HOSCHEIT IN SUPPORT OF PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION**

I, Donald C. Hoscheit, declare under penalty of perjury under the laws of the United States of America that:

Background

1. I am Donald C. Hoscheit, President of Hoscheit Consultants, Ltd., located at 4202 Royal Saint Anne Ct., Saint Charles, Illinois. A copy of my curriculum vitae is attached to this declaration. I am a licensed pharmacist with many years of experience in the chain drug and managed care environment. My career at OSCO Drug/American Stores spanned 22 years ending with my retirement in 1994. From 1976 to 1993 I was responsible for the entire pharmacy area

and became Senior Vice President of Pharmacy Operations. From 1993 to 1994 I was Senior Vice President of Managed Care. During that entire period, I was responsible for development, marketing, and administration of third-party prescription drug program to the market and for the 134,000 employees of the corporation.

2. Hoscheit Consultants, Ltd. is an international consulting firm that was founded in 1994 to provide expert consulting services in the pharmacy and managed care areas to retail pharmacies, pharmaceutical manufacturers, technology and equipment manufacturers, and others in pharmacy related businesses. The firm continues in those efforts today.

3. I understand that this lawsuit involves allegations that defendants engaged in a scheme to inflate AWP markups from WAC for brand drugs. I have been asked by counsel for the Plaintiffs to provide an opinion based on my experience as to the calculation of percentage-based co-pays at retail and how an increase in the AWP-WAC markup would impact percentage-based co-pays.

Calculation of Percentage-Based Co-pays

4. In my experience the percentage co-pay is calculated as a percentage of the following base price:

Average Wholesale Price minus a discount percentage plus a dispensing fee or:

$AWP - \% + Fee = \text{Base Price}$

I have never seen, nor do I know of a case where a manufacturer's rebate directly impacted the co-pay paid by the patient. This observation has been corroborated by a recent study by the Kaiser Foundation. Jack Hoadley, Ph.D, COST CONTAINMENT STRATEGIES FOR PRESCRIPTION DRUGS: ASSESSING THE LITERATURE (March 2005), at 52.

Affect of Inflated Markups on Percentage Co-pays

5. The question was also asked as to the impact of an increase in the AWP-WAC markup on the co-pay amount paid by the patient. If one assumes that the discount and dispensing fee remain constant, the only element that would increase the co-payment is an increase in the AWP. An increased AWP can be the result of a manufacturer increase in the wholesale acquisition cost (WAC) or as a result of the change in the markup between the WAC and the AWP as shown in the following example using actual data for the drug Lipitor 10mg. The prices shown are per tablet:

January 2001 WAC = \$2.62 AWP = \$3.14 Markup = 20%

January 2002 WAC = \$2.70 AWP = \$3.37 Markup = 25%

6. The following demonstrates how a percentage-based co-pay would be determined for a quantity of 90 Lipitor tablets based on the January 2001 and January 2002 AWP. The demonstration shows that as the AWP-WAC markup is inflated, the co-pay is also inflated.

January 2001 – AWP for 90 Lipitor 10mg is \$282.60. AWP contractual discount is 15%. Dispensing fee is \$3.00

AWP of \$282.60 – 15% discount + \$3.00 fee = \$243.21

A 20% co-pay of \$243.21 = \$48.64

January 2002 – AWP for 90 Lipitor 10mg rises to \$303.30. Discount from AWP and fee remain constant.

AWP of \$303.30 – 15% discount + \$3.00 fee = \$260.80

A 20% co-pay of \$260.80 = \$52.16

Had the markup remained constant, the AWP would have increased to \$291.60.

AWP of \$291.60 – 15% discount + \$3.00 fee = \$250.86

A 20% co-pay of \$250.86 = \$50.17

As a result of the 2002 AWP-WAC markup increase, the patient in this example paid approximately \$2 more for his or her co-pay. This demonstrates that an increase in AWP-WAC markup results in an increased co-pay.

Executed this 28th day of November, 2007.



DONALD C. HOESCHEIT

DONALD C. HOSCHEIT
President
Hoscheit Consultants Ltd.

Don Hoscheit founded Hoscheit Consultants Ltd. in April of 1994. His full-time consulting practice is multi-faceted and operates in the areas of both generic and branded pharmaceutical marketing, managed health care, retail store operations and marketing, and trade association management. He has made numerous presentations to meetings and conventions, both nationally and internationally. His consulting practice extends internationally as well. He is advisor to institutions of higher education in curriculum development and endowment programs.

Mr. Hoscheit founded his consulting practice after a 22-year career at American Drug Stores. For 19 of those 22 years he was the Chief Pharmacy Officer. During his tenure, the pharmacy operation grew from under 200 stores with prescriptions drug sales of \$20 million to over 900 stores with prescription drug sales of over \$1.5 billion. His responsibilities included store operations, purchasing, marketing, professional services, government and regulatory affairs, and managed care.

His career at American Drug Stores began as a staff pharmacist in 1972. He joined the central staff in 1973, became Director of Pharmacy in June of 1975, and Vice President of Pharmacy Operations in December of 1975. In 1990, he became Senior Vice President of Pharmacy Operations and in 1993 Senior Vice President of Managed Health Care, a position which he held until April, 1994.

Prior to joining American Drug Stores, he owned and operated his own pharmacy for 12 years after five years of development as pharmacist and manager of an independent pharmacy. He also served for two years in the U.S. Army Medical Service Corps after graduating from the University of Illinois College of Pharmacy.

His outside involvement includes work in many church and community service organizations. He was instrumental in the planning and funding of Chicago College of Pharmacy, now Midwestern University, which opened in the fall of 1993 and continues to serve as an advisor to the University. He has been a guest lecturer at several graduate schools of business and colleges of pharmacy.

Mr. Hoscheit is the recipient of the distinguished Harold Pratt Award as Chain Pharmacist of the Year for 1993. He is also one of five recipients of the President's Medal awarded for his service to Midwestern University. His professional affiliations include state and national pharmacy and managed pharmacy organizations. He also chaired the National Association of Chain Drug Stores Pharmacy Affairs Committee in 1984 and 1993. He is licensed to practice pharmacy in the states of Illinois and Hawaii.

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Major areas of responsibility in Pharmacy at American Drug Stores included:

- **Member of seven person Executive Committee of senior officers.**
- **P & L responsibility for 950 pharmacies with \$1.6 Billion of prescription drug sales.**
- **Pharmacy operations at store level and field supervision for 950 pharmacies.**
- **Managed Care including:**
 - **Sales and marketing programs**
 - **A 17 person field sales force targeted at HMO's, PPO's, employers, union benefit programs, etc.**
 - **Management of external pharmacy benefit management relationships.**
 - **Design of managed care contracts and negotiation of contracts and terms.**
 - **Development and implementation of full internal pharmacy benefit management capabilities.**
- **Development and operation of a full-service mail order pharmacy.**
- **Pharmacy marketing including electronic and print media and in-store programs.**
- **Pharmacist continuing education.**
- **Pharmacist labor relations, compensation, and benefits.**
- **Professional services, legal, and licensing for pharmacists and pharmacies.**
- **Purchasing of branded and generic pharmaceutical product for all pharmacies.**
- **Operations and development of Home Health Care retail stores.**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on November 28, 2007.

/s/ Steve W. Berman
Steve W. Berman